

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
www.science.house.gov

October 26, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We write today continuing the Science, Space, and Technology Committee's examination of the U.S. Environmental Protection Agency's (EPA) planned study on the relationship between hydraulic fracturing and drinking water (the "Study"). On May 11, 2011, the Committee held a hearing examining the draft Study and EPA's protocols for transparency during the development, peer-review and implementation of the Study. Members raised several concerns about the Study including: the level of stakeholder involvement in the development of the draft and finalized study plan; the responsibility of EPA in responding to or incorporating comments submitted by the public; the scope and structure of the study, particularly as it pertains to risk assessment; the necessity to protect against any biases when EPA conducts the study, especially during data collection; and the coordination with other agencies in regard to hydraulic fracturing.

During the hearing and in response to questions for the record, Assistant Administrator Paul Anastas assured the Committee that EPA's efforts in developing the draft and final study plan would be open, transparent, and include appropriate incorporation of peer-review and quality assurance measures. Unfortunately, it appears that EPA is not adhering to those commitments. We are concerned that, despite the lack of a study plan, the Agency started collecting data by gathering samples at a hydraulic fracturing site in Wise County, Texas¹ and sending data request letters to stakeholders. This process ignores the requirement for proper protocols and standards to be in place prior to such action to ensure the validity and accuracy of the data.

¹ David Porter, Texas Railroad Commission, "Texans don't fear science; neither should the EPA," *Fort Worth Star-Telegram*, September 19, 2011, <http://www.star-telegram.com/2011/09/19/3380224/porter-texans-dont-fear-science.html>.

Further, in his responses, Dr. Anastas described EPA's public and stakeholder (i.e., webinars and meetings) outreach during the preliminary planning phase of the Study, and the coordination of the technical workshops in February and March of 2011. However, there exists with these initial events a significant lack of transparency. For example, the level of detail provided during the public outreach events was limited at best—a fact documented by the Science Advisory Board's (SAB) finding that “the [draft] Study Plan provides inadequate detail on how to address the overall research questions.”² Without adequate and publicly available information, the Agency's outreach and peer review activities amount to “check the box” exercises, which is unacceptable given the potential level of influence and significance of the Study. Dr. Anastas assured the Committee during the May 11th hearing that EPA “will continue to engage [stakeholder] groups, in an effort to ensure that the study is conducted in an unbiased and objective way.”

In the spirit of ensuring “a transparent, peer-reviewed process” throughout the entire life of the Study and in the spirit of the Congressional direction, the Committee trusts that EPA will suspend any data collection requests, activities, or sampling until such time as the necessary Quality Assurance Project Plans (QAPPs) are prepared, reviewed, approved, and issued for public comment, in accordance with the assurances provided to the Committee by the Agency.

As the Committee expects EPA to maintain stakeholder consultation and ensure that study activities are transparent and peer-reviewed as appropriate, we request your Agency's response to the following questions:

1. Were the Technical workshop presentations and abstracts used at all EPA Technical Workshops in connection with the Study provided to the SAB and made publicly available? Please describe whether and how the technical content was available to the SAB to consider in its review of the Draft Study Plan. If that material was not available, provide an explanation why.
2. How was the information presented during the EPA Technical Workshops integrated into the Draft and/or Final Study Plan? Was material from the Technical Workshops made available to all agency staff providing input to the Study plan?
3. Has the Study been designated by EPA as a “highly influential scientific assessment” as defined in the Office of Management and Budget's January 2005 guidelines *Final Information Quality Bulletin for Peer Review*? If not, provide an explanation why.
4. When will the Final Study Plan be released?

²[http://yosemite.epa.gov/sab/sabproduct.nsf/0/E76EF59B634E839B852578AF0066BBD9/\\$File/Review+of+EPA%E2%80%99s+Draft+Hydraulic+Fracturing+Study+Plan-6-14-11+QR+draft.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/0/E76EF59B634E839B852578AF0066BBD9/$File/Review+of+EPA%E2%80%99s+Draft+Hydraulic+Fracturing+Study+Plan-6-14-11+QR+draft.pdf).

Characterization of Risk

The draft study plan clearly stated that a “risk based approach” was used to identify research that addresses the “most significant risks.” Dr. Anastas testified before this Committee that the study is “not a risk assessment” and that there was no assumption of risk. However, your recent response to the SAB stated that EPA will discuss how “risk assessment” was used during the prioritization of research activities.

1. Given the apparent inconsistency provided to the Committee and SAB, please clarify how EPA identified the “most significant risks”?
2. The Draft Study Plan states that “[f]ollowing guidance from the SAB, EPA used a risk-based prioritization approach to identify research that addresses the most significant risks at each stage of the hydraulic fracturing water lifecycle.”
 - a. How has this or any other risk characterization been used thus far in Agency decisions relating to the Study and in accordance with the EPA Policy for Risk Characterization or EPA Risk Characterization Handbook?³
 - b. Please provide the Committee a detailed description, including supporting technical documentation, of all risk assessment activities and materials associated with the Study.
2. The SAB recommended that the Study focus on “fundamental topics that will be relevant to policy formulation and on environmental concerns related to hydraulic fracturing rather than on concerns common to all oil and gas production activities.”⁴ What method is the Agency using to differentiate concerns related to hydraulic fracturing from concerns common to all oil and gas production activities?

Data Quality Assurance

In responding to the Committee’s concerns regarding data quality and integrity, Assistant Administrator Anastas stated:

“EPA will ensure that the data used in this study are not biased by following the Agency’s Q[uality] A[ssurance] guidelines. The study will be conducted following the Agency’s most graded approach for the application of QA requirements to research projects according to the intended use of the results and the degrees of confidence needed in the quality of the results. By implementing the study at the highest category, QA Category I, a rigorous QA approach is applied...The study will have its own defined quality system, which will be documented in a Quality Management Plan that presents the various roles and

³ EPA Risk Characterization Handbook (EPA100-B-00-002) December 2000. www.epa.gov/spc/pdfs/rchandbk.pdf

⁴ Advisory on EPA’s Research Scoping Document Related to Hydraulic Fracturing (EPA-SAB-10-009). [http://yosemite.epa.gov/sab/sabproduct.nsf/0/CC09DE2B8B4755718525774D0044F929/\\$File/EPA-SAB-10-009-unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/0/CC09DE2B8B4755718525774D0044F929/$File/EPA-SAB-10-009-unsigned.pdf)

responsibilities of the study participants, as well as the various processes to be implemented. Each EPA-funded research project will have an associated Quality Assurance Project Plan (QAPP) which has been QA reviewed and approved prior to start of data collection. The QAPP will outline the criteria used to determine the quality of data collected or generated for the research project and will also address uncertainties associated with the data. This will ensure that all data used in EPA-funded research projects will be of the quality appropriate for the study.”⁵

As EPA has indicated, the Agency is currently in the process of finalizing the Study Plan in response to the SAB’s comments. Nevertheless, it is our understanding that, despite the absence of a final Study Plan, EPA’s aforementioned data collection activities demonstrate that EPA has already initiated the Study. These actions appear to directly contravene the assurances this Committee received only weeks ago, and make it impossible for EPA staff to determine if these activities even meet the goals of the Study. Further, without a reviewed and approved QAPP, the veracity and quality of data collected, samples obtained, and associated Study conclusions cannot be assured.

1. Have the project specific plans (the QAPPs) for the prospective and retrospective sites, as well as any other components of the Study, been finalized as Dr. Anastas assured the Committee they would be?
 - a. If so, were the specific plans developed in accordance with EPA Quality and Peer Review protocols?
 - b. Please provide copies of all project specific plans with supporting quality documentation.

2. Will each project specific plan (QAPP) be open for public comment and external peer review to ensure the Congressional expectation of a study “conducted through a transparent, peer-reviewed process that will ensure the validity and accuracy of the data?”
 - a. If so, when will the plans be released for public comment and peer review?
 - b. If not, provide an explanation.
 - c. Are all test protocols publicly available and are tests being conducted in such a way that each data point can be independently verified?

3. To what extent has the EPA engaged in any field activities (e.g. data collection, monitoring, sampling, etc.) associated with the Study?
 - a. If so, please explain why no information has been released to the public about such activities?
 - b. If so, what plans or protocols were used or are being used by EPA to determine the appropriateness of these activities?
 - c. Please detail all sampling conducted to date, including timing and location as well as the laboratories and testing protocols used to analyze each of the samples.

⁵ EPA Response to Questions for the Record, September 23, 2011.

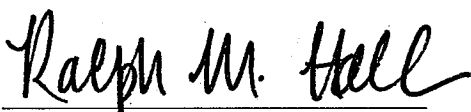
Interagency Cooperation

In relation to all executive branch activities, the President has stated that interagency coordination and review is imperative. Additionally, in a September 23, 2011 submission to this Committee, EPA Assistant Administrator Dr. Paul Anastas stated that “[a]s we proceed with our study, EPA is working closely with other agencies such as the Department of Energy (DOE), including DOE’s National Energy Technology Laboratory; the Department of Interior, including the US Geological Survey and the Bureau of Land Management; the US Army Corps of Engineers; and other agencies to identify opportunities for collaboration and to leverage resources.” In order to better understand the extent of interagency coordination and in an effort towards greater transparency, please provide the Committee with a detailed list of any meetings and/or communications that have taken place between EPA officials and officials in the following Federal agencies (including entities within such agencies). Please include the names and titles of relevant officials participating in any such meetings and/or communications and include any materials or presentations given by EPA officials relating to hydraulic fracturing activities.

1. U.S. Department of Energy;
2. U.S. Department of Energy Secretary of Energy’s Advisory Board (SAEB);
3. U.S. Department of the Interior;
4. U.S. Department of Agriculture; and
5. U.S. Army Corps of Engineers.

Please provide written responses by no later than two weeks from the date of this letter.. If you have any questions regarding this request please contact Ms. Tara Rothschild with the Subcommittee on Energy and Environment Majority staff at (202) 225-8844.

Sincerely,



Rep. Ralph M. Hall
Chairman



Rep. Andy Harris
Chairman
Subcommittee on Energy
and Environment



Rep. Paul Broun
Chairman
Subcommittee on Investigations
and Oversight

cc: Rep. Eddie Bernice Johnson
Ranking Member

Rep. Brad Miller
Ranking Member
Subcommittee on Energy
and Environment

Rep. Paul Tonko
Ranking Member
Subcommittee on Investigations
and Oversight